

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JENNIFER BAEZ,

Plaintiff,

ORDER

- against -

CV 2006-3103 (ENV)(MDG)

COMMERCE BANK, et al.,

Defendants.

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Defendant filed a letter application on August 17, 2007 requesting an extension of the expert discovery deadline and requiring that plaintiff appear in New York for physical examinations by defendants' medical experts. See ct. doc. 14. No opposition having been received, this application is granted.

Although courts ordinarily follow the rule that a defendant is entitled to examine a plaintiff in the forum where she commenced suit, this "general rule may yield to the exigencies of the particular case" where a plaintiff shows special circumstances such as hardship or undue burden. Abdullah v. Sheridan Square Press, Inc., 154 F.R.D. 591, 592-94 (S.D.N.Y. 1994); see also Normande v. Grippo, No. 01 Civ. 7441 (JSR)(THK), 2002 WL 59427, at *1 (S.D.N.Y. Jan.16, 2002); Ortiz v. Summit II, Inc., 1993 WL 33596, *1 (S.D.N.Y. Jan 29, 1993); Costanza v. Monty, 50 F.R.D. 75, 76 (E.D.Wisc. 1970); Baird v. Quality Foods, Inc., 47 F.R.D. 212, 212-13 (E.D.La. 1969) and cases cited. Such a rule enables a party to insure that "the examining physician

[is] available conveniently for testimony" at trial. Baird, 47 F.R.D. at 213; see also Warren v. Weber & Heidenthaler, Inc., 134 F.Supp. 524, 525 (D.C.Mass. 1955). In the absence of any claim of hardship or other special circumstances, there is no reason not to follow the presumption. However, defendants must attempt to accommodate plaintiff's schedule and use best efforts to insure that the examinations by the two experts take place on consecutive days.

Plaintiff must advise defendants by September 7, 2007 of her availability by October 15, 2007 for the examinations. The deadline for defendant's expert reports is extended to November 15, 2007 and the next conference is adjourned to November 19, 2007 at 11:30 a.m.

SO ORDERED.

Dated: Brooklyn, New York
September 4, 2007

/s/_____
MARILYN D. GO
UNITED STATES MAGISTRATE JUDGE